

under R.S.O. 1897, c. 68, s. 5, tried with a jury at Walkerton. There was no averment or proof of special damage and interlocutory judgment was signed in default of defence, and the case was entered for assessment of damages merely. It was contended on behalf of the defendant that section 5, which says that "the plaintiff may recover nominal damages without the averment or proof of special damage," in the absence of such averment and proof, restricts the plaintiff to nominal damages. For the plaintiff it was contended that the effect of the statute is to entitle the plaintiff absolutely to nominal damages, and that the jury may in their discretion also enable her to recover substantial damages.

*Held*, 1. The purpose of the legislation, was, in cases in which the plaintiff could not prove special damage, to permit her to rehabilitate her character by the verdict of a jury which would be fully accomplished by a verdict for nominal damages, and that this was the full measure of the right intended to be conferred by the statute.

2. That as the plaintiff could not obtain final judgment for the nominal damages to which she was entitled and for her costs without bringing the case down for an assessment of damages by a court for the trial of actions (Rule 589) she is entitled as part of the costs of the action necessarily incurred by her, to the costs incurred in connection with the assessment of damages.

*D. Robertson*, K.C., for plaintiff. *O. E. Klein*, for defendant.

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Riddell, J.—Trial.]

[March 28.]

VACCARO v. KINGSTON & PEMBROKE RY. CO.

*Railway—Hand-car—Train.*

*Held*, that a hand-car is not a "locomotive, engine, machine, or train" within the meaning of the Railway Act, and this is not affected by the definition given in R.S.C. 1906, c. 37, s. 2(32).

*Flock*, for plaintiff. *T. J. Meredith*, K.C., for defendants.